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9 UNITED STATES DISTRICT COURT

10 CENTRAL DISTRICT OF CALIFORNIA

11 FEDERAL TRADE COMMISSION, et
al.,

12 Plaintiffs,

13
14 vs.

15 GREEN EQUITABLE SOLUTIONS, et
16 al.,

17 Defendants.

Case No. 2:22-cv-06499-FLA-MAR

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION OF RECEIVER, DAVID P.
STAPLETON, FOR ORDER:
(1) APPROVING FINAL REPORT
AND ACCOUNTING;
(2) AUTHORIZING PAYMENT OF
FINAL FEE APPLICATION OF
RECEIVER AND PROFESSIONALS;
(3) ESTABLISHING RESERVE FOR
COSTS OF CLOSING
RECEIVERSHIP; (4) AUTHORIZING
TRANSFER OF RECEIVERSHIP
ASSETS TO PLAINTIFF
REGULATORS; (5) AUTHORIZING
ABANDONMENT OR
DESTRUCTION OF RECORDS; AND
(6) CLOSING RECEIVERSHIP AND
DISCHARGING AND RELEASING
RECEIVER**

[Notice of Motion and Motion;
Declaration of David P. Stapleton; Final
Report and Accounting; Final Fee
Application; and [Proposed] Order
submitted concurrently herewith]

Date: May 3, 2024

Time: 1:30 p.m.

Judge Hon. Fernando L. Aenlle-Rocha
Ctvm: 6B

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

David P. Stapleton (the "Receiver") was appointed as the permanent receiver for Defendants Green Equitable Solutions, also dba Academy Home Services; South West Consulting Enterprises, Inc. also dba Academy Home Service, Atlantic Pacific Service Group, Golden Home Services of America Enterprises, and Home Matters USA; Apex Consulting & Associates Inc. also dba Golden Home Services America and Home Matters USA Consulting; Infocom Entertainment Ltd., Inc., also dba Amstar Service Group, Atlantic Pacific Service, and Home Relief Service of America; and their respective subsidiaries and affiliates, including but not limited to The Michael R. Nabati Irrevocable Living Trust dated December 23, 2020 (each an "Entity", and collectively, the "Receivership Entities" or "Entities") pursuant to this Court's September 14, 2022 *Order Granting Plaintiffs' Ex Parte Application For Temporary Restraining Order With Asset Freeze, Appointment Of Temporary Receiver, Limited Expedited Discovery, And Order To Show Cause Why Preliminary Injunction Should Not Issue* (the "Appointment Order") [ECF No. 25], as reaffirmed by the Court's September 29, 2022 *Order Granting Plaintiffs' Request For Preliminary Injunction With Asset Freeze And Extending Authorization Of Temporary Receiver Through The Pendency Of The Action* (the "Preliminary Injunction") [ECF No. 40].

Pursuant to the Appointment Order, Preliminary Injunction, the Court's subsequent orders regarding the Receiver's administration of the estate of the Receivership Entities (the "Estate"), and law governing federal equity receivers, the Receiver's most significant responsibilities during the pendency of the instant receivership have included:

1. Obtaining records relevant to the business and financial activities of the Receivership Entities and their personnel, and performing an accounting of the Receivership Entities' financial activities and condition;

2. Assuming control and authority over the Entities' assets (the
"Receivership Assets" or "Assets");

3. Investigating, locating, and recovering Receivership Assets, including
Assets unlawfully diverted to or for the benefit of third parties;

4. Marshaling and monetizing available Receivership Assets to maximize
the value of the Estate in anticipation of a potential distribution to Estate creditors;
and

5. Preparing periodic updates and reports to the Court regarding his
efforts and the status of the receivership.

The specific tasks undertaken by and accomplishments of the Receiver, some
of which are addressed herein, are presented in more detail in the Receiver's
concurrently submitted *Final Report and Accounting of Receiver, David P.
Stapleton* (the "Final Report"). For the purposes of this Motion, and by way of
summary, the Receiver believes he has diligently and appropriately discharged those
duties and obligations assigned to him by the Court pursuant to the terms of the
Appointment Order and the Preliminary Injunction, which reaffirmed the Receiver's
duties and authority and extended his appointment for the duration of the above-
entitled action. As of the date of this Motion, the Receiver believes that he has, with
the assistance of his counsel, Allen Matkins Leck Gamble Mallory & Natsis, LLP
("Allen Matkins"), satisfied his responsibilities to the fullest extent possible, and
that the cost to the Estate of continuing the present receivership would likely exceed
any likely potential benefit. As a consequence, the Receiver has concluded that it is
now appropriate to bring the instant receivership to a close, pay outstanding fees and
costs, and discharge and release the Receiver. The Receiver therefore respectfully
requests that this Court enter an Order: (1) approving the Receiver's Final Report
and the actions taken by the Receiver during the pendency of his appointment;
(2) authorizing the payment of the fees and expenses presented in the Receiver's and
Allen Matkins' concurrently submitted *Final Application for Payment of Fees and*

1 *Reimbursement of Expenses of Receiver, David P. Stapleton, and his Professionals*
2 (the "Final Fee Application"); (3) authorizing the Receiver to establish and set aside
3 a reserve in the amount of no more than \$30,000 (the "Reserve") to cover the
4 anticipated fees and expenses associated with winding down the receivership;
5 (4) authorizing the Receiver to transfer (the "Remittance") all Receivership Asset
6 funds remaining after the payment of administrative fees and costs to the plaintiff
7 regulators; (5) authorizing the Receiver to abandon or destroy, as appropriate, all
8 Receivership Entity records in his possession, within 90 days after his discharge as
9 receiver; and (6) authorizing the Receiver to undertake and complete those tasks
10 necessary to wind-down and close the receivership, as detailed further below, and
11 thereafter discharging and releasing the Receiver.

12 As is customary in similar federal receivership matters, the Receiver will
13 submit a Declaration to the Court certifying the completion of all closing tasks
14 described herein (the "Final Declaration"), and respectfully requests that the
15 receivership be deemed terminated, without further Court order, upon the Receiver's
16 submission of the Final Declaration.

17 **II. RELEVANT FACTUAL BACKGROUND.**

18 A full recitation of the procedural history of this matter is unnecessary for
19 the purposes of this Motion, particularly given that the Receiver's Final Report,
20 which summarizes the Receiver's actions during the pendency of this matter in
21 greater detail, has been submitted concurrently herewith. The facts relevant to the
22 Motion are as follows:

23 Plaintiffs the Federal Trade Commission and California Department of
24 Financial Protection and Innovation (collectively, the "Regulators") filed their
25 Complaint in this matter on September 12, 2022. (ECF No. 1.) The Complaint
26 alleged that the Receivership Entities and their principals engaged in a mortgage
27 modification scheme whereby the Entities' customers, distressed mortgage
28 borrowers, were fraudulently induced to make payments to the Entities in exchange

1 for loan modification services which were rarely, if ever, provided, and the proceeds
2 from which were diverted by the Receivership Entities and their principals for their
3 unilateral benefit. (*Id.*) Among other relief, the Regulators sought the appointment
4 of a receiver, which this Court granted by way of the Appointment Order. (*See*
5 Plaintiffs' Ex Parte Application for Temporary Restraining Order With Assert
6 Freeze, Appointment of Temporary Receiver, Limited Expedited Discovery, and
7 Order to Show Cause Why Preliminary Injunction Should Not Issue [ECF No. 9];
8 Appointment Order [ECF No. 25].)

9 Pursuant to the Appointment Order, the Receiver was charged with, among
10 other things, assuming control of the Receivership Entities, marshaling Receivership
11 Assets, performing an investigation into, and accounting of, the business and
12 financial activities of the Receivership Entities, preparing reports for the Court, and
13 otherwise administering the Receivership Entities. (ECF No. 25 at 16:20-19:4.)

14 Since his appointment, the Receiver has administered the Estate and all
15 Receivership Assets in accordance with this Court's instructions, including
16 specifically: (1) marshaling, preserving, and liquidating Receivership Assets;
17 (2) obtaining documents critical to the Receiver's investigation via informal and
18 formal document requests, including the issuance of multiple subpoenas;
19 (3) performing an accounting and analysis of the Receivership Entities' operations
20 (or lack thereof), financial activities, and condition; and (4) preparing periodic
21 reports to this Court. (*See* concurrently filed Declaration of David P. Stapleton
22 ["Stapleton Decl."] ¶ 3-4; ECF Nos. 36, 60, 158, 247, 290, and 325.) The specific
23 actions undertaken during the course of the Receiver's appointment have been
24 detailed in the Receiver's interim reports, one supplemental report, and the
25 concurrently submitted Final Report. By way of short summary, the Receiver's
26 most significant efforts and achievements included:

- 27 • Completing an exhaustive document discovery process, resulting in the
28 recovery of tens of thousands of pages of documents, and undertaking a

1 review of such documents in order to complete an appropriate analysis
2 and accounting;

- 3 • Substantially confirming the Regulators' allegations regarding the
4 alleged fraud operated through the Entities, and determining that the
5 Entities could not be operated as a viable going concern;
- 6 • Identifying and designating an additional Receivership Entity, the
7 Michael R. Nabati Irrevocable Living Trust, which was associated with
8 defendant Michael Nabati, and to whom, or for whose benefit, the
9 Receiver concluded millions in Estate assets were diverted;
- 10 • Taking possession of numerous Receivership Assets, and with
11 Mr. Nabati's and the Regulators' consent, preparing for sale and
12 marketing, and ultimately overseeing the sale of four (4) real properties
13 (the "Real Properties") purchased with funds wrongfully diverted from
14 the Entities, resulting in an aggregate recovery of over \$3.6 million;
15 and
- 16 • Pending this Court's approval, remitting at least \$2.8 million, reflecting
17 the net amounts recovered by the Receiver, after the deduction of all
18 administrative fees and expenses, to the Regulators in accordance with
19 whatever instructions they provide, in anticipation of the Regulators
20 establishing a victim restitution fund or otherwise attending to the
21 appropriate disposition of the funds recovered by the Receiver. (*See*
22 Stapleton Decl. ¶ 4.)

23 The Receiver, having recently completed the sale of all remaining Real
24 Properties subject to his authority or control, has determined, in his reasonable
25 business judgment, that the costs of continuing the receivership at this point would
26 very likely exceed the value of any additional Asset recoveries. (*Id.* at ¶ 5.)
27 Accordingly, the Receiver respectfully recommends that the receivership be wound
28 down and terminated, and the Receiver discharged and released. (*Id.*)

1 **III. RECOMMENDED CLOSING AND DISCHARGE PROCEDURES.**

2 **A. Receivership Wind-Down And Final Closing Tasks.**

3 By this Motion, the Receiver respectfully requests Court approval of, and
4 authorization to complete, the final closing tasks detailed below in connection with
5 closing the instant receivership and securing the Receiver's discharge and release:

6 1. Approval of the Receiver's Final Report and Accounting.

7 The Receiver's Final Report has been submitted to this Court concurrently
8 with this Motion. The Final Report details the efforts undertaken by the Receiver
9 during the pendency of the receivership, including his document review and
10 analysis, accounting, Asset preservation and recovery, and reporting to this Court.
11 The Receiver's final accounting, appended to the Final Report as **Exhibit 1**, reflects
12 the Estate's receipts and disbursements through March 31, 2024. The Receiver
13 respectfully requests that the Court approve his Final Report and the final
14 accounting appended thereto.

15 2. Payment of Fees and Expenses of Receiver and his Professionals.

16 Concurrently with this Motion, the Receiver and Allen Matkins (collectively,
17 the "Applicants") have submitted the Final Fee Application, requesting approval of
18 fees earned and costs incurred by the Applicants during the period from
19 November 1, 2024 through February 29, 2024. The total amount requested in the
20 Final Fee Application is \$124,149.97. Detailed narrative summaries of and billing
21 invoices for the work performed by the Applicants are set forth in the Final Fee
22 Application. The Receiver requests authorization to pay the Applicants out of the
23 Assets presently on hand.

24 3. Recovery of Outstanding Turnover Amounts.

25 In its February 2, 2024 *Order Granting Plaintiffs' Motion for Summary*
26 *Judgment Against Defendants Michael Robin Nabati, Armando Solis Barron,*
27 *Dominic Ahiga, and Roger Scott Dyer* [ECF No. 323], and *Order Granting*
28 *Plaintiffs' Application for Default Judgment* [ECF No. 324], this Court directed

1 certain financial institutions and other entities in possession or control of the
2 judgment debtors' assets to turn over such assets to the Receiver within 10 days of
3 receipt of the orders. In the Receiver's experience, and as has been the case here,
4 financial institutions tend to proceed very deliberately when making turnover
5 decisions. As of the date of this Motion, the Receiver has received an additional
6 approximately \$78,447 in turnovers associated with the Court's recent orders, but
7 anticipates that additional funds may remain outstanding, which funds may be
8 turned over to the Receiver in the coming weeks. The Receiver will continue to
9 serve as the designated recipient for any such funds pending the termination of the
10 receivership and will turn over those funds received as part of the Remittance to the
11 Regulators as proposed herein.

12 4. Turnover of Receivership Assets to the Regulators.

13 Based on his discussions with the Regulators regarding the best means of
14 making recovered funds available for restitution to injured consumers, the Receiver
15 has concluded that the most cost-effective method of ensuring that recovered Assets
16 are optimally deployed is to turn over the Assets to the Regulators concurrent with
17 the wind-down and termination of the receivership. In the Receiver's reasonable
18 business judgment, and under the facts of this case, such a course of action would be
19 superior, on a cost-benefit basis, to the alternative of a Receiver-administered claims
20 and distribution process, with its attendant additional expense.

21 Therefore, the Receiver respectfully requests that the Court authorize him to
22 transfer all Receivership Assets, less the fees and expenses requested in the Final
23 Fee Application, plus the Reserve, to the Regulators in accordance with whatever
24 turnover instructions they may provide to him. At present, the Receiver estimates
25 that the amount of the Remittance to the Regulators will exceed \$2.8 million.

26 5. Establishment of the Reserve.

27 The Receiver and Allen Matkins will have incurred additional fees and
28 expenses beyond those requested in the Final Fee Application, after February 29,

1 2024 and through the end of the receivership, as they attend to the wind-down tasks
2 necessary to bring the receivership to a close after the submission of the instant
3 Motion, Final Report, and Final Application. The Receiver recommends that the
4 Court authorize him to set aside an amount not to exceed \$30,000 (again, the
5 "Reserve") to cover such fees and expenses, to be paid without further order of the
6 Court. Of course, the Receiver and Allen Matkins will endeavor to minimize their
7 respective fees and expenses and, any portion of the Reserve remaining after all
8 closing tasks have been completed will be turned over to the Regulators, as part of
9 the Remittance, in accordance with whatever turnover instructions the Regulators
10 ultimately provide the Receiver.

11 6. Abandonment or Destruction of Records.

12 The Receiver is in possession of records obtained during his administration of
13 the Estate, either at the outset of the receivership or recovered from third parties
14 during his investigation into the affairs of the Receivership Entities, some of which
15 are maintained in paper form. Many of these documents contain the personal
16 financial information, or other sensitive information, of mortgage borrowers who
17 sought the services of the Receivership Entities. Accordingly, the Receiver
18 proposes that, within 90 of days after the entry of an order granting this Motion, the
19 Receiver be authorized to destroy any documents containing private information,
20 and further that he be authorized to abandon or destroy the balance of the records in
21 his possession relating to the Receivership Entities and the present receivership.

22 7. Completing Outstanding Closing Tasks for the Receivership and
23 Discharging and Releasing Receiver.

24 The Receiver respectfully requests that, once he has completed the above-
25 identified closing tasks, this Court thereafter close the present receivership case and
26 discharge and release the Receiver, effective upon the Receiver's submission of the
27 Final Declaration.
28

1 **IV. ARGUMENT.**

2 **A. The Proposed Final Closing Tasks Should Be Authorized And The**
3 **Receiver Discharged And Released.**

4 A court's power to administer an equity receivership is extremely broad. *SEC*
5 *v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986); *SEC v. Forex Asset Mgmt., LLC*, 242
6 F.3d 325, 331 (5th Cir. 2001); *SEC v. Basic Energy & Affiliated Res.*, 273 F.3d 657,
7 668 (6th Cir. 2001); *SEC v. Elliot*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v.*
8 *Wang*, 944 F.2d 80, 85 (2d Cir. 1991). In the absence of controlling authority, and
9 where applicable, district courts supervising equity receiverships routinely look to
10 bankruptcy law for guidance. *SEC v. Am. Capital Invs.*, 98 F.3d 1133, 1140 (9th Cir.
11 1996); *CFTC v. Topworth Int'l*, 205 F.3d 1107, 1116 (9th Cir. 1999) (Central
12 District local rules, for instance, "direct receivers, unless otherwise ordered ... to
13 'administer the estate as nearly as possible in accordance with ... the administration
14 of estates in bankruptcy."); *Fleet Nat'l Bank v. H&D Entm't*, 926 F.Supp. 226, 240
15 n. 56 (D. Mass. 1996) ("[W]hat is permitted under the Bankruptcy Code, generally
16 is, *a fortiori*, permissible under receivership law.").

17 In the fiduciary estate administration context, courts are deferential to the
18 business judgment of bankruptcy trustees, receivers, and similar estate custodians.
19 *See, e.g., Bennett v. Williams*, 892 F.2d 822, 824 (9th Cir. 1989) ("[W]e are
20 deferential to the business management decisions of a bankruptcy trustee."); *Sw.*
21 *Media, Inc. v. Rau*, 708 F.2d 419, 425 (9th Cir. 1983) ("The decision concerning the
22 form of ... [estate administration] ... rested with the business judgment of the
23 trustee."); *see also SEC v. Health Maint. Ctrs., Inc.*, 2002 WL 34388014 (W.D.
24 Wash. 2002) (Equating bankruptcy trustees with receivers and finding that "the
25 courts have overwhelmingly applied a 'business judgment' test" to estate
26 administration.); *In rethinking Machs. Corp.*, 182 B.R. 365, 368 (D. Mass. 1995)
27 ("The application of the business judgment rule ... and the high degree of deference
28

1 usually afforded purely economic decisions of trustees, makes court refusal
2 unlikely.") (rev'd on other grounds, 67 F.3d 1021 (1st Cir. 1995)).

3 As reported herein and in the concurrently submitted Final Report, the
4 Receiver has made all reasonable and necessary efforts to recover, review, and
5 analyze Receivership Entity business records, provide an accounting of the
6 Receivership Entities' financial activities, recover available Receivership Assets,
7 and monetize such assets so as to create a pool of funds that may be deployed in an
8 equitable distribution to creditors. The Receiver's conclusion that it is now
9 appropriate to close the receivership and discharge and release the Receiver has only
10 been reached after a series of successful Asset recovery efforts and a comprehensive
11 investigation of the operational and financial activities of the Receivership Entities
12 and a subsequent reporting. The Receiver's recommendation that the receivership
13 should now be wound down and the Receiver discharged and released should be
14 afforded great the deference ordinarily accorded to the business judgment of
15 bankruptcy trustees, receivers, and similar estate custodians.

16 **B. The Final Fee Application Is Reasonable And Appropriate, And**
17 **Payment Of All Outstanding Fees and Expenses Should Be**
18 **Authorized At This Time.**

19 "As a general rule, the expenses and fees of a receivership are a charge upon
20 the property administered." *Gaskill v. Gordon*, 27 F.3d 248, 251 (7th Cir. 1994);
21 *accord Atl. Tr. Co. v. Chapman*, 208 U.S. 360, 374 (1908). The fees and expenses
22 of a receivership include the fees and expenses reasonably incurred by the receiver
23 in administering his or her duties, as well as the fees and expenses reasonably
24 incurred by the receiver's professionals in rendering services to the receiver. *See*
25 *Drilling & Expl. Corp. v. Webster*, 69 F.2d 416, 418 (9th Cir. 1934). Decisions
26 regarding the amount and timing of an award of receivership fees and expenses are
27 committed to the sound discretion of the district court. *See Elliott*, 953 F.2d at 1577.
28 Furthermore, the district court has "broad powers and wide discretion in crafting

1 relief," including in "distributing receivership assets." *Quilling v. Trade Partners,*
2 *Inc.*, 572 F.3d 293, 301 (6th Cir. 2009).

3 1. The Fees and Expenses Requested in the Final Fee Application
4 are Reasonable.

5 The fees of a receiver and his professionals must be reasonable. *See In re San*
6 *Vicente Med. Partners, Ltd.*, 962 F.2d 1402, 1409 (9th Cir. 1992). In determining
7 the reasonableness of the fees and expenses requested in connection with a
8 receivership, a court should consider the time records presented, the quality of the
9 work performed, the complexity of the problems faced, and the benefit of the
10 services rendered to the receivership estate. *See SEC v. Fifth Ave. Coach Lines,*
11 *Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973).

12 Here, the Final Fee Application describes the nature of the services that have
13 been rendered by the Applicants and, where appropriate, the identity and hourly
14 billing rate of the individual performing each specific task. The Applicants have
15 endeavored to staff matters as efficiently as possible in light of the level of
16 experience required and the complexity of the issues presented, including with
17 respect to specific legal advice sought by and provided to the Receiver.
18 Additionally, the Receiver and Allen Matkins have both agreed to apply significant,
19 across-the-board discounts to their standard billing rates for this engagement. The
20 Receiver has agreed to apply a 10% discount to his and his staff's hourly rates.
21 Allen Matkins has agreed to apply a discount of 15% to all attorney and staff hourly
22 rates for this matter, and not to bill for travel time.

23 The Receiver has reviewed the Fee Application and believes the fees and
24 expenses requested by the Applicants to be fair and reasonable and consistent with
25 the work performed. The Receiver likewise believes that the Estate has benefited
26 from the services identified in the Final Fee Application.

27
28

2. The Fees and Expenses Incurred in the Receivership Satisfy the
Ninth Circuit Standard for Presumptive Reasonableness.

Courts in the Ninth Circuit use either the "percentage of fund" calculus or apply the "lodestar" method to determine whether a fiduciary fee request is appropriate. *See, e.g., Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000); *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 109 F.3d 602, 609 (9th Cir. 1997). The "percentage of fund" determines an appropriate fee as a percentage of funds recovered. *Powers*, 229 F.3d at 1256. In evaluating the propriety of a fee request with reference to the total funds recovered, the Ninth Circuit has established a benchmark of 25% as presumptively reasonable. *See, e.g., Powers*, 229 F.3d at 1256-57; *see also Petroleum Prods.*, 109 F.3d at 607 (25% determined to be an appropriate benchmark in common fund matters).

An application of the "lodestar" method requires multiplying the number of hours reasonably required for the services performed by the movant's reasonable hourly fee to arrive at the so-called lodestar amount. *See, e.g., Blum v. Stenson*, 465 U.S. 886, 888 (1984). Once the lodestar amount is calculated, a court can then adjust fees up or down depending on context and relevant factors, including the expertise of counsel, complexities of litigation and risks involved, the relation of fees to total recovery (essentially, a "percentage of fund" correction), and other factors. *In re San Vicente Med. Partners, Ltd.*, 962 F.2d 1402, 1410 (9th Cir. 1992).

Here, as reflected in the Receiver's Final Report, the Receiver's total recoveries for the benefit of the Estate, and its investors and creditors, have exceeded \$3.6 million. By way of the Final Fee Application, the Receiver and Allen Matkins have requested that the Court approve the payment of a total of \$154,149.97 in fees and expenses, inclusive of the Reserve, bringing the total amount of fees and expenses requested for payment in this matter to approximately \$663,300. As compared to the more than \$3.6 million in Assets recovered by the

1 Receiver during the pendency of his appointment, this amount reflects less than 19%
2 of the total, well below the 25% threshold addressed in *Powers*.

3 Accordingly, the Receiver respectfully submits that his and Allen Matkins'
4 collective fees and expenses are presumptively reasonable. An application of the
5 lodestar method to the fees and cost incurred to date likewise supports the Final Fee
6 Application, particularly given the complexity of the business and financial
7 activities of the Entities, the lack of documentation initially available to the Receiver
8 and the resultant investigation and forensic accounting he was required to undertake,
9 and the Receiver's success in identifying, taking possession of, and maximizing the
10 value of the Receivership Assets. The Receiver therefore respectfully requests that
11 the Court grant the Final Fee Application and approve the fees and expenses
12 requested therein.

13 3. The Fees and Expenses Requested in the Final Fee Application
14 have been Submitted to the Regulators, Without Objection.

15 With respect to compensation requests made by a receiver, courts give great
16 weight to the judgment and experience of the regulatory agency involved in the
17 underlying action. As one court has noted in a bankruptcy case in which the
18 Securities and Exchange Commission was a party, "it is proper to [keep] in mind
19 that the [plaintiff regulator] is about the only wholly disinterested party in [this]
20 proceeding and that ... its experience has made it thoroughly familiar with the
21 general attitude of the Courts and the amounts of allowances made in scores of
22 comparable proceedings." *In re Phila. & Reading Coal & Iron Co.*, 61 F. Supp.
23 120, 124 (E.D. Pa. 1945). Indeed, the Regulators' positions are not "mere casual
24 conjectures, but are recommendations based on closer study than a district judge
25 could ordinarily give to such matters." *Finn v. Childs Co.*, 181 F.2d 431, 438 (2d
26 Cir. 1950) (citation omitted) (internal quotation marks omitted). These
27 "recommendations as to fees of the [government agency] may be the only solution
28 to the very undesirable subjectivity with variations according to the particular judge

1 under particular circumstances which has made the fixing of fees seem often to be
2 upon nothing more than an ipse dixit basis." *Id.* (citation omitted) (internal
3 quotation marks omitted). Accordingly, the Regulators' position on a fee request
4 should be "given great weight." *Fifth Ave. Coach Lines*, 364 F. Supp. at 1222.

5 Here, in order to ensure that the fees and expenses requested in the Final Fee
6 Application are reasonable and appropriate, the Applicants submitted a draft of the
7 Final Fee Application, along with their respective invoices, to the Regulators for
8 review and comment prior to filing. After a review of the Final Fee Application and
9 a discussion with the Receiver's office and Allen Matkins, the Regulators confirmed
10 they do not oppose the Final Fee Application. The Regulators are likely in the best
11 position to measure the fees and expenses requested in the instant receivership
12 against those incurred in other, similar proceedings and cases of similar complexity,
13 *see Phila. & Reading Coal & Iron*, 61 F. Supp. at 124, and a decision on their part
14 not to object to the Final Fee Application merits significant deference. *Id.*
15 Accordingly, the Applicants respectfully request that the Court approve the fees and
16 expenses as sought in the Final Fee Application.

17 4. The Receiver Should be Authorized to Pay Allowed Fees and
18 Expenses from Cash on Hand.

19 As reflected in the Final Fee Application, the Receiver has requested that the
20 Court authorize the payment of his requested fees and expenses for the period from
21 November 1, 2024 through February 29, 2024 in the amount of \$62,080.73, and
22 payment of Allen Matkins' requested fees and expenses for the same period in the
23 amount of \$62,069.24. The Receiver presently holds in excess of \$3 million for the
24 benefit and administration of the Estate, and he respectfully requests that the Court
25 permit him to make payment of the fees and expenses requested in the Final Fee
26 Application from cash on hand.

27
28

1 **V. CONCLUSION.**

2 Based on the Receiver's cumulative findings and the fulfillment of his duties
3 under the Appointment Order and other Court orders in this receivership case, the
4 Receiver respectfully requests that this Court enter an order:

5 1. Approving the Final Report and Accounting, along with the actions
6 taken by the Receiver during the pendency of his appointment.

7 2. Authorizing the payment of the Final Fee Application in the respective
8 amounts of \$62,080.73 payable to the Receiver, and \$62,069.24 payable to Allen
9 Matkins;

10 3. Authorizing the Receiver to establish a Reserve in the amount of
11 \$30,000;

12 4. Authorizing the Receiver, after the payment of authorized costs, fees
13 and expenses, to make the Remittance to the Regulators;

14 5. Authorizing the Receiver to abandon or destroy, as appropriate, all
15 Receivership Entity records in his possession, within 90 days after his discharge as
16 receiver;

17 6. Authorizing the Receiver to undertake and complete those tasks
18 necessary to wind-down and close the receivership, as detailed further below, and
19 thereafter closing the instant receivership and discharging and releasing the
20 Receiver, effective upon receipt of a Declaration from the Receiver confirming the
21 completion of all closing tasks.

22
23 Dated: April 1, 2024

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